

**ADMINISTRATIVE SITE PLAN PERMIT
APPEAL TO CITY COUNCIL
REVIEW SHEET**

CASE NUMBER: SP-2008-0091D **COUNCIL HEARING DATE:** January 29, 2009

ADDRESS: 328 Heartwood Drive

SITE AREA: 0.22 acres

PROJECT NAME: 328 Heartwood

NEIGHBORHOOD PLAN: West Congress

APPLICANT: Ruben Rodriguez
328 Heartwood Drive
Austin, TX 78745

AGENT: King Engineering Associates, Inc. (Aaron Googins)
2211 S IH-35, Suite 200
Austin, TX 78741

CASE MANAGER: Chris Yanez Telephone: 974-1810
chris.yanez@ci.austin.tx.us

PROPOSED DEVELOPMENT:

The applicant has erected a retaining wall over 4 feet/fence over 6 feet and added fill over 4 feet inside the 25-year and 100-year flood plain and inside the Critical Water Quality Zone.

This site plan was disapproved by staff and is being appealed to City Council by the applicant

SUMMARY STAFF RECOMMENDATION:

Staff recommends denial of the appeal and upholding administrative disapproval of the site plan. The site plan does not comply with all requirements of the Land Development Code.

EXISTING ZONING: SF-3 (Single Family Residence).

EXIST. USE: Single Family Residence

PROJECT INFORMATION: 0.22 acres.

MAX. HEIGHT (ZONING): 35 feet

PROPOSED BLDG. CVRG: N/A

PROPOSED IMP. CVRG: N/A

NEIGHBORHOOD ORGNIZATIONS:

026—Far South Austin Community Assn.

428—Barton Springs/Edwards Aquifer Conservation District.

511—Austin Neighborhoods Council

627—Onion Creek Homeowners Assn.

300—Terrell Lane Interceptor Assn.

742—Austin Independent School District
786—Home Builders Association of Greater Austin
1075—League of Bicycling Voters
1108—Perry Grid 644
1113—Austin Parks Foundation
1037—Homeless Neighborhood Assn.

T.I.A.: N/A

CAPITOL VIEW: N/A

WATERSHED: Williamson Creek (Suburban)

APPLICABLE WATERSHED ORDINANCE: Comprehensive Watershed Ordinance
(Suburban)

PLANNING COMMISSION ACTION:

September 23, 2008: Approved staff's recommendation to deny environmental variances. Vote: 7-0-1

October 28, 2008: Approved staff's recommendation to deny the appeal of administrative disapproval.
Vote: 6-2-1

SUMMARY COMMENTS ON SITE PLAN:

Land Use: The applicant has erected a retaining wall over 4 feet/fence over 6 feet and added fill over 4 feet inside the 25-year and 100-year flood plain and inside the Critical Water Quality Zone.

Development of the site would also require a variance for encroachment of a structure into a floodplain, which is not a part of this appeal. The floodplain variance would require approval by Council as well as a Conditional Letter of Map Revision approved by FEMA.

Staff recommends denial of the appeal.

Environmental: This site is located in the Williamson Creek Watershed and subject to comprehensive watershed regulations. The site is not located over the Edward's Aquifer Recharge Zone. Environmental variances for Section 25-8-392; development in a critical water quality zone and, Sections 25-8-342; fill over 4 feet were not recommended by staff and denied by the Planning Commission on September 23, 2008. The site plan does not comply with all environmental requirements.

Transportation: N/A

EXISTING ZONING AND LAND USES:

	ZONING	LAND USES
<i>Site</i>	SF-3	Single-Family Residence
<i>North</i>	P-NP	Creek, Floodplain
<i>South</i>	ROW then SF-3	Heartwood Dr, then Single-Family Residence
<i>East</i>	SF-3	Single-Family Residence
<i>West</i>	SF-3	Single-Family Residence



City of Austin Watershed Protection and Development Review Department
505 Barton Springs Road / P.O. Box 1088 / Austin, Texas 78767-8835

SITE PLAN APPEAL

If you are an applicant and/or property owner or interested party, and you wish to appeal a decision on a site plan application, the following form must be completed and filed with the Director of Watershed Protection and Development Review Department, City of Austin, at the address shown above. The deadline to file an appeal is 14 days after the decision of the Land Use Commission (ZAP or PC), or 20 days after an administrative decision by the Director. If you need assistance, please contact the assigned City contact at (512) 974-2680.

CASE NO. SP-2008-0091D

PROJECT NAME 328 Heartwood Drive

PROJECT ADDRESS 328 Heartwood Drive
Austin, Texas 78745

APPLICANT'S NAME King Engineering

CITY CONTACT Chris Yanez

DATE APPEAL FILED 11/03/08

YOUR NAME Aaron Googins

SIGNATURE

YOUR ADDRESS 2211 IH 35, Suite 200
Austin, Texas 78741

YOUR PHONE NO. (512) 462-4921 WORK
(512) 695-3453 HOME

INTERESTED PARTY STATUS: Indicate how you qualify as an interested party who may file an appeal by the following criteria: (Check one)

- ☐ I am the record property owner of the subject property
- ☒ I am the applicant or agent representing the applicant
- ☐ I communicated my interest by speaking at the Land Use Commission public hearing on (date)
- ☐ I communicated my interest in writing to the Director or Land Use Commission prior to the decision (attach copy of dated correspondence).

In addition to the above criteria, I qualify as an interested party by one of the following criteria: (Check one)

- ☐ I occupy as my primary residence a dwelling located within 500 feet of the subject site.
- ☐ I am the record owner of property within 500 feet of the subject site.
- ☐ I am an officer of a neighborhood or environmental organization whose declared boundaries are within 500 feet of the subject site.

DECISION TO BE APPEALED*: (Check one)

- ☐ Administrative Disapproval/Interpretation of a Site Plan
- ☐ Replacement site plan
- ☒ Land Use Commission Approval/Disapproval of a Site Plan
- ☐ Waiver or Extension
- ☐ Planned Unit Development (PUD) Revision
- ☐ Other: _____

Date of Decision: _____

Date of Decision: _____

Date of Decision: 10/28/08

Date of Decision: _____

Date of Decision: _____

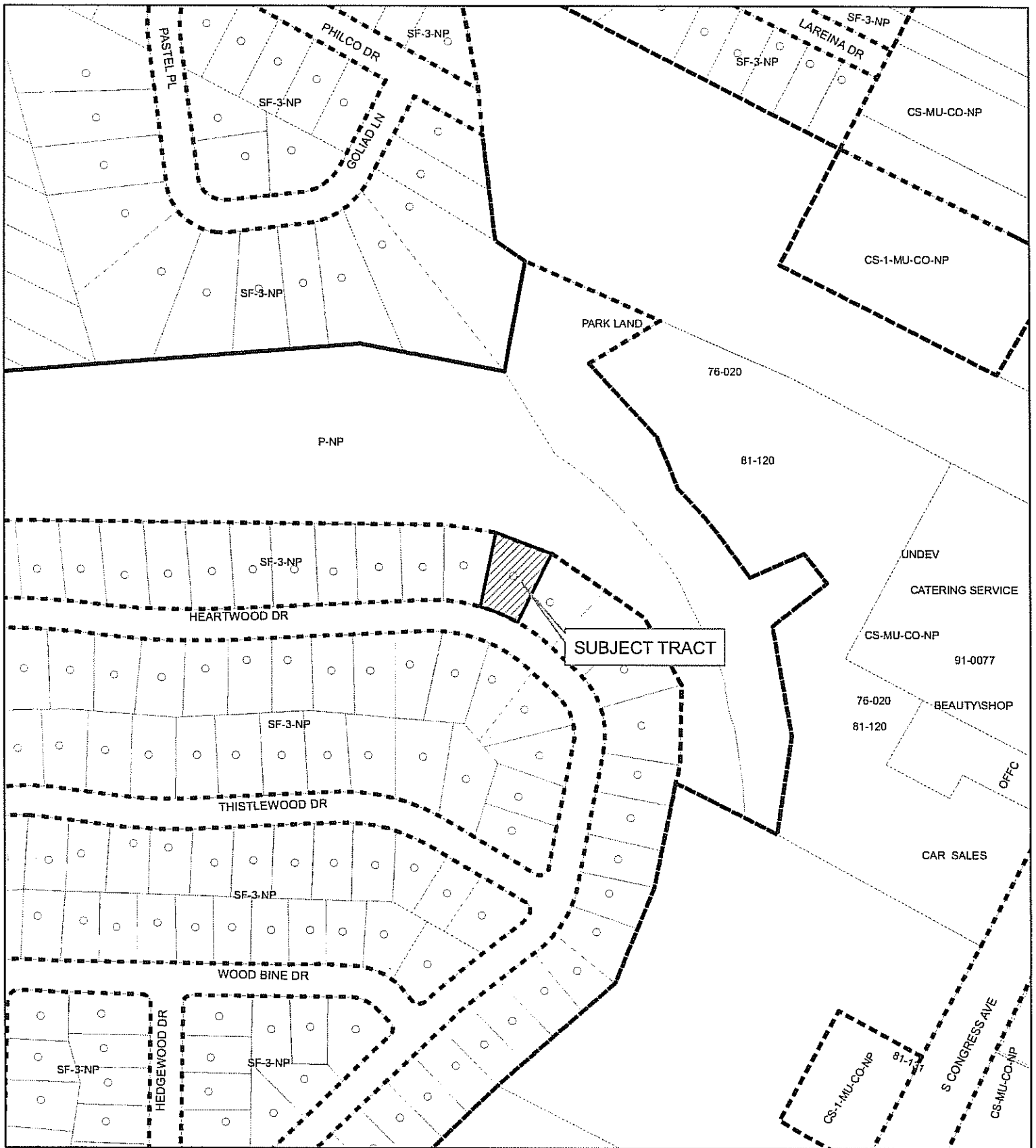
Date of Decision: _____

*Administrative Approval/Disapproval of a Site Plan may only be appealed by the Applicant.



STATEMENT: Please provide a statement specifying the reason(s) you believe the decision under appeal does not comply with applicable requirements of the Land Development Code:

We are applying to appeal and/or hereby appeal the Land Use Commission's disapproval and/or decision of a site plan on the bases that the environmental variances applied for were denied in error and/or improperly denied.

Applicable Code Section: 25-5-112 and 25-5-111



SITE PLAN

 **SUBJECT TRACT**
 **ZONING BOUNDARY**

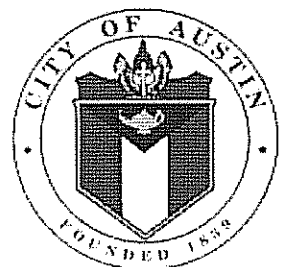
CASE#: SP-2008-0091D
 ADDRESS: 328 HEARTWOOD DR
 GRID: G17
 MANAGER: C. YANEZ

OPERATOR: B. BARNETT



1" = 200'

This map has been produced by G.I.S. Services for the sole purpose of geographic reference.
 No warranty is made by the City of Austin regarding specific accuracy or completeness.



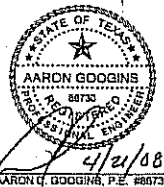
2211 South IH 35, Suite 200
Austin, TX 78741
Phone 512 462-4921
Fax 512 462-1372
www.Kingengineering.com



Kin
ENGINEERING ASSOCIATES, INC.

328 HEARTWOOD DRIVE

328 HEARTWOOD DRIVE
AUSTIN, TEXAS 78745

[illegible]

RESULTS

SITE PLAN

THE SIGNATURE OF THE QUALITY CONTROL OFFICER IN THIS SPACE INDICATES THAT ALL REQUIRED PERMITS HAVE BEEN OBTAINED AND THAT CONSTRUCTION IS AUTHORIZED TO COMMENCE.

L OF THIS TRACT IS WITHIN THE 25-YEAR FLOOD ZONE, THE CRITICAL WATER QUALITY ZONE, AND THE WATER QUALITY TRANSITION ZONE ACCORDING TO FEMA MAP NO. 44453C0210F FOR TRAVIS COUNTY, TEXAS. (EFFECTIVE DATE: JUNE, 1997.)

October 14, 2008

Dear Council Members,

My name is Tiffany Russell and I am neighbor to 328 Heartwood Drive. I was present at the last meeting speaking against any variances for the subject property. I apologize now that I am unable to make the meeting on October 28, 2008. Please, however, do not take this as a disregard for the importance of the meeting, I am not any less worried about the direct impact that the wall and fill have on my property but also all the properties located upstream.

The applications for variances are being applied for in pieces and real issues are not being addressed appropriately. I urge the panel to take time to understand the impact of this wall and fill. Any adverse effect in flood water is detrimental to other properties. A couple of inches in rise may seem insignificant to anyone not being affected by the flood water, but it can mean all the difference to our homes being flooded. Currently I pay \$772.00 per year in flood insurance and each year the insurance rate goes up. To my knowledge, FEMA regulates the amount of insurance that each property must have by the levels of floodplain that they are located in. It's my opinion that the rise in insurance and revisions in the floodplain maps are a direct indication that the floodplain in our neighborhood is a serious issue to FEMA.

I am also of the opinion that the City of Austin would not have allowed the construction of the retainer wall with fill had they had a clear understanding of the project and of the obstruction of water flow and its impact beforehand. Allowing people to apply for variances after a reprimand sends a clear message that homeowners can apply for and do questionable projects without having to do proper fact finding beforehand.

I have included information that may be useful in trying to understand the situation at hand. You will notice that I have attached a previous letter written to Chairman Fuentes and other board members for the Board of adjustment in 2007. I believe this letter, with its attachments, will give you the proper history needed to resolve this matter sooner rather than later.

Again, I apologize that I cannot attend this very important meeting, but want to assure you that I take very seriously this wall and its impact on our neighborhood.

Thank you for your time and for reviewing the information that I have provided.


Tiffany Russell
330 Heartwood Drive

Dear Chairman Fuentes and Members of the Board:

I am the owner of the residence located at 330 Heartwood Drive, Austin, Texas 78745 ("330 Heartwood"). My residence is located to the west of the residence located at 328 Heartwood Drive ("328 Heartwood") owned by Mr. Rubin Rodriguez, who requesting a variance for a fence over six feet in height. The enclosed package details the detrimental impact of the "fence" and the multiple violations the have occurred in its construction. This "fence" is truly a retaining wall which holds approximately 10 feet of fill, all of which has been constructed in the floodplain without permits or variances. Please review this package and contact me with any questions.

As way of background, Community of Fairview is a subdivision just south of the Williamson Creek that was platted in July of 1968.(Please reference the attached plat map) In addition to City of Austin zoning setbacks, the lots located along Heartwood Drive were platted to have: (i) a 7.5 foot public utility easement and drainage easement running along the rear of the lots, and (ii) a 5 foot surface drainage easement reserved along each side the lots. (Please reference the recorded document in Vol. 3654,Page 224-of the Real Property Records for 328 Heartwood and attached surveys for both 328 and 330 Heartwood). The survey submitted for 328 Heartwood is a boundary survey (not a title survey) and therefore does not detail the easements. Nevertheless, based on my research and title work it appears that they are applicable. In the drainage easement previously referenced for 328 Heartwood, Section B6 specifically states that "within these easements, no structure, planting or other material shall be placed or PERMITTED to remain which may change the direction of flow in the drainage channels or swales in the easements or which may obstruct or retard the flow of the water through the drainage channels or swales in the easements." Heartwood Drive backs to the creek and is located in a floodplain created by Williamson Creek. Section 25-7-3 of the Code of the City of Austin requires that any homeowner that lives in a flood plain "shall keep the waterway free from an obstruction that is not authorized by a site plan," and there shall be no adverse impact to others by obstructing the existing waterway or by placing fill in the floodplain. Please refer to photo #1; you will see that in the retaining wall is really utilized to hold a massive amount of fill. Based on discussions with City staff, they have not yet seen the plans that have been submitted to the Board, and are therefore unaware of the amount of fill used by the property.

In 2005 when Mr. Rodriguez began construction, I informed him that this would significantly increase the chances of flooding for all of the neighbors to the west of his property. Please refer to photos #2 through #4. In particular, photo #4 was taken after one night of rain. You will see that the water is backing into my yard and being dammed by the retaining wall.

In early May of 2006, I called 311 because I noticed that there had never been a permit pulled for the construction of the wall or variances for all of the fill. I have enclosed the service request form May 03, 2006. You will notice that city inspector; Ms. Maria Maisonet reviewed the construction at 328 Heartwood, but was told it would be limited to no taller then 6ft in height. At that point the case was closed.

I called 311 again on September 11, 2006, because the wall continued to get taller. After performing an inspection, on June 2, 2006, Mr. Luther Perez informed the owner that he was in violation. Two week later, it appears that Mr. Perez followed-up with Mr. Rodriguez, but there was still a height violation. On July 27 2006, Mr. Perez verified and photographed the violation and now labeled the structure as a retaining wall. The next day, Mr. Rodriguez retained Mr. Phil Moncado to represent him on the violation. Based on the paperwork I have seen, on September 11, 2006, Mr. Perez gave Mr. Rodriguez 1 week to file for a variance. As a variance was not filed, on October 4, 2006, Mr. Perez referred the case to a Municipal Court Coordinator to file a court case for the violation; however, the case has not yet been heard by the court.

Mr. Rodriguez came to our home on June 30, 2006, to speak with us about the retaining wall. Mr. Rodriguez spoke with my husband, Mike Russell, about signing a letter of support so that he could place another foot on top of the wall with caps. Mike signed the letter before we discussed the issue, and he was not aware of all the issues. After we discussed the potential impact, Mike went to Mr. Rodriguez and asked to retract the letter. Mr. Rodriguez was informed at that time that we would not be supporting his construction. Regardless of what has been presented to you previously, we do NOT support Mr. Rodriguez or the retaining wall in any way, shape, or form. As this is still being categorized as a fence, Section 25-2-899 states that a "solid fence along a property line may be constructed to a maximum height of eight feet if each owner of the property that adjoins a section of the fence that exceeds a height of six feet files a written consent to the construction of the fence with the building official." Again, Mr. Rodriguez does not have our support.

During the April 9, 2007 meeting of the board of adjustment on this case, Mr. Moncado stated that the Watershed Protection and Development Review Department and the U.S Army Corps of Engineers had been studying the flooding problems that face the owners backing the Williamson Creek. Mr. Moncado stated that the Corps of Engineers was attempting to get funding to purchase 4 homes on Heartwood Drive due to flooding concerns. As you can see from the attached letter from the Watershed Department dated October 28th, 2005, the buyout of homes is voluntary. The homeowners do not have to sell, and the City does not have to buy. Furthermore, based on an updated cost estimate for the project, the project far exceeds the target percentage set by the Corps (Based on the City's website, it appears this increase is from \$4.4

million to \$17.9 million). At this time the existing FEMA floodplain map shows that both 328 and 330 Heartwood are located in the 100 year floodplain. As you can see based on the attached map, the proposed FEMA map shows that the proposed floodplain will encompass even more homes in the area.

I ask that you review the violations that I have accounted for through the past two years as well as the enormous impact on the environment and our safety. Please reject this variance and have this wall taken down. Based on my discussions with the environmental dept., City staff is doing further research on the potential environmental violation. This wall has ruined my quality of life, the resale value of my home, and it puts all of the neighbors in danger.

Thank you for your time and consideration in this matter.

Sincerely,

Tiffany Russell
Owner of 330 Heartwood

I have accounted for timelines and all information given, based on the research done through the past two years. Please verify for accuracy

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512 302 3920

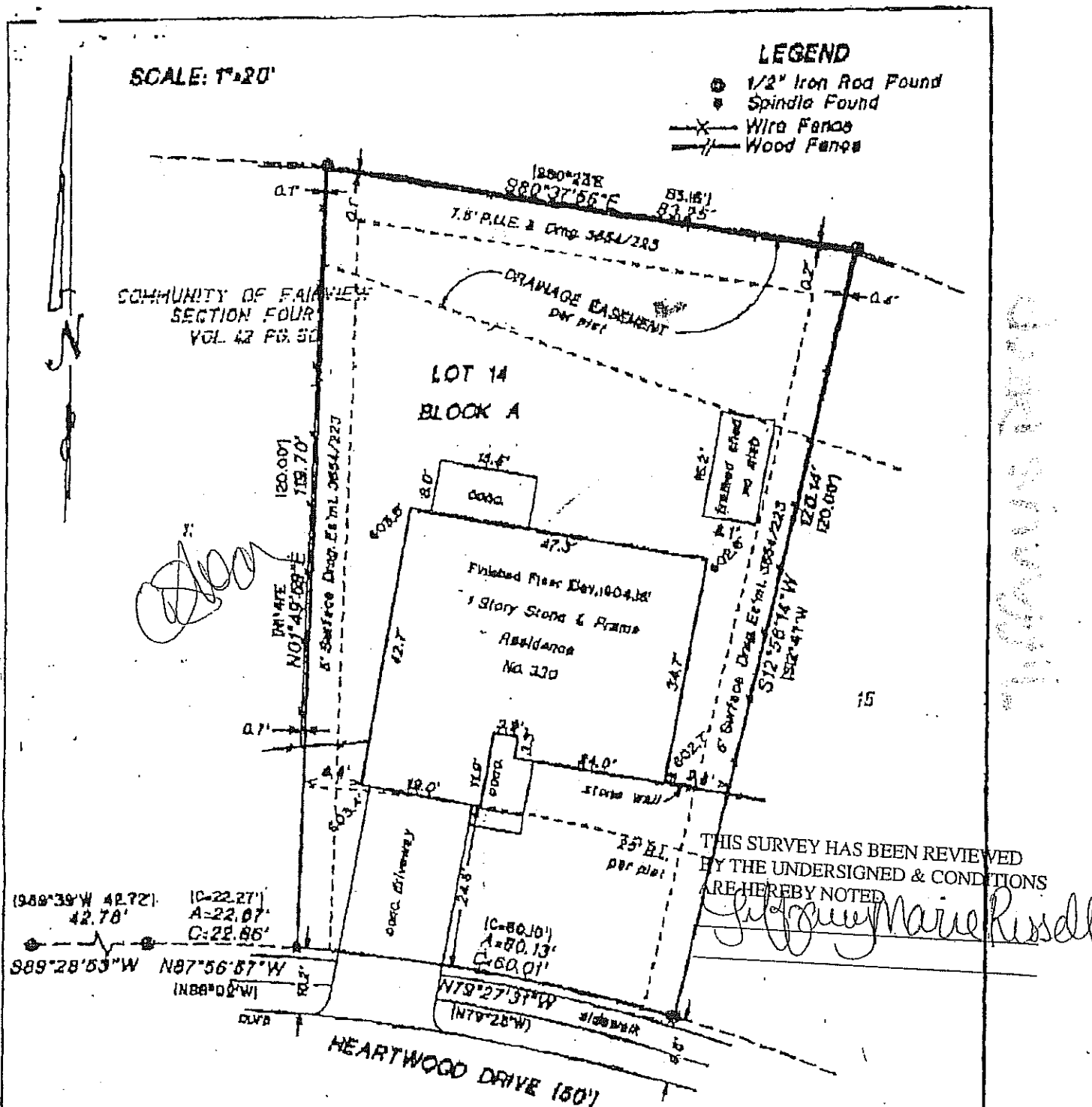
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P.02/02

512-482-8077 TX. PROF. TITLE

078 P02

APR 24 '99 10:06



SURVEY PLAT OF

LOT 14, BLOCK A, COMMUNITY OF FAIRVIEW, SECTION FOUR,
A SUBDIVISION IN TRAVIS COUNTY, TEXAS, ACCORDING TO THE MAP
OR PLAT THEREOF RECORDED IN VOL. 42, PAGE 50, PLAT RECORDS OF
TRAVIS COUNTY, TEXAS, LOCATED AT 380 HEARTWOOD DRIVE.

To: Floyd Eugene Braxton and Angela Michelle Braxton
THE STATE OF TEXAS x First American Bank, SSB, Old Republic National
COUNTY OF TRAVIS x Title Insurance Co. and Texas Professional Title, Inc.:

File No. 221813

The undersigned does hereby certify that a survey was this day made
on the ground of the property legally described hereon and is correct
and that there are no shortages in area, boundary line conflicts

§ 25-7-1 APPLICABILITY OF CHAPTER.

(A) Except as provided in Subsection (B), this chapter applies in the planning jurisdiction.

(B) For the preliminary plan, final plat, or subdivision construction plan in the portion of the city's extraterritorial jurisdiction that is within Travis County:

(1) this chapter does not apply; and

(2) Title 30 (*Austin/Travis County Subdivision Regulations*) governs.

Source: Subsection 13-6-1(e); Ord. 990225-70; Ord. 031211-11; Ord. 031211-42.

§ 25-7-2 OBSTRUCTION OF WATERWAYS PROHIBITED.

Unless authorized by a site plan approved under Chapter 25-5 (*Site Plans*), a person may not place, or cause to be placed, an obstruction in a waterway.

Source: Section 13-6-2; Ord. 990225-70; Ord. 031211-11.

§ 25-7-3 DUTY TO MAINTAIN UNOBSTRUCTED WATERWAYS.

The person in control of real property traversed by a waterway shall keep the waterway free from an obstruction that is not authorized by a site plan.

Source: Section 13-6-2; Ord. 990225-70; Ord. 031211-11.

§ 25-7-4 STANDING WATER DECLARED A NUISANCE.

A pool of standing water in a waterway that is caused by an unauthorized obstruction in the waterway is declared to be a nuisance.

Source: Section 13-6-2; Ord. 990225-70; Ord. 031211-11.

§ 25-12-3 LOCAL AMENDMENTS TO THE BUILDING CODE.

The following provisions are local amendments to the 2003 International Building Code. Each provision in this section is a substitute for the identically numbered provision deleted by Section 25-12-1(B) (*Building Code*) or is an addition to the 2003 International Building Code.

Source: Ord. 20051215-106.

101.2 Scope. The provisions of this code shall apply to the construction, alteration or addition, movement, enlargement, replacement, repair, equipment, use and occupancy, including a change in occupancy, location, maintenance, removal and demolition of every